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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/917,205	07/30/2001	Bruce Layne	560301-1420	8321

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EXAMINER

SEMBER, THOMAS M

ART UNIT PAPER NUMBER

2875

DATE MAILED: 08/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/917,205

Applicant(s)

LAYNE ET AL.

Examiner

Thomas M Sember

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 27-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 43-45 is/are allowed.
- 6) ☒ Claim(s) 27-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Applicant only discusses the claimed invention in the abstract. In the Detailed Description of the drawings no particularly figure teaches all the claimed elements of claim 27.

#### *Claim Rejections - 35 U.S.C. § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -  
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**I. Claims 27 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Mouchi. Mouchi discloses a base 22 having a lamp channel *for receiving a lamp*. An electrically conductive contact member (8 and 9) has a first and second portion, the first portion of the contact member is arranged in the lamp channel *for contacting the lamp*, the second portion of the contact member *for contacting an electrical conductor in the track frame*; and a retention piece (the slots in the channel which holds contacts 8 and 9 and wires 23-25) is configured to retain the conductive contact member within the base.**

**The base 22 further includes an adaptor portion 16 having a retention channel for receiving the retention piece.**

Note-The wording in italics is merely intended use language and given very little patentable weight.

***Claim Rejections - 35 U.S.C. § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -  
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**II. Claims 27-42 are rejected under 35 U.S.C. 102(b) as being anticipated by Glass. Glass discloses a base 34 having a lamp channel *for receiving a lamp*. An electrically conductive contact member (62 and 64) has a first and second portion, the first portion of the contact member is arranged in the lamp channel *for contacting the lamp*, the second portion of the contact member *for contacting an electrical conductor in the track frame*; and a retention piece (52) the channel which holds contacts 62 and 64) is configured to retain the conductive contact member within the base. The base 34 further includes an adaptor portion 80 having a retention channel for receiving the retention piece. Regarding claim 30 as broadly claimed the wire in the middle can be interpreted as the third portion.**

Note-The wording in italics is merely intended use language and given very little patentable weight.

***Claim Rejections - 35 U.S.C. § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -  
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**III. Claims 27-33, 35-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Nieminen. Nieminen discloses a base 22 having a lamp channel *for receiving a lamp*. An electrically conductive contact member ((16 and 20) has a first and second portion, the first portion of the contact member is arranged in the lamp channel *for contacting the lamp*, the second portion of the contact member *for contacting an electrical conductor in the track frame*; and a retention piece (12) is configured to retain the conductive contact member within the base. The base 22 further includes an adaptor portion 10 having a retention channel for receiving the retention piece.**

Note-The wording in italics is merely intended use language and given very little patentable weight.

***Allowable Subject Matter***

Claims 43-45 are allowable. None of the prior art of record alone or in combination teaches or fairly suggest the details of claim 43 which among other things claims "the first portion of each contact member arranged in the lamp channel for

contacting the first and second lamps, the second portion of each contact member removably arranged within the upper channel of the track frame for contacting a respective electrical conductor, the third portion of each contact member arranged in the retaining channel

### ***Response to Arguments***

2. Applicant's arguments filed on 05/14/03 have been fully considered but they are not persuasive. The applicant argues intended use limitations to overcome the 102 rejection in view of Mouchi. In response to applicant's argument Mouchi fails to teach a lamp channel ***for contacting a lamp***, the second portion of the contact member ***for contacting an electrical conductor in the track frame***," the applicant is reminded that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

3. Furthermore, Applicant's arguments are moot in view of the new ground(s) of rejection.

### **Prior Art**

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Usher et al and harwood teach track assemblies similar to applicant's invention.

### **Conclusion**

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### **Prior Art**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Seelbach et al, Shen and Gabrius all disclose light fixtures similar to applicant's invention.

**IV. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas M. Sember whose telephone number is (703) 308-1938. The examiner can normally be reached on Monday - Thursday from 8:00 AM - 5:00 PM. The examiner can also be reached on alternate Fridays.**

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea, can be reached at (703)-305-4939. The fax phone number for this group are (703) 872-9318 for regular communications and (703)-872-9319 for after-final communications.

Any inquiries of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 305-0956.



Thomas M. Sember  
Primary Examiner  
March 9th, 2003